



Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2017 (No. 1)

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

I, Peter Clark, Deputy Chief Executive Officer, Australian Transaction Reports and Analysis Centre, make this Instrument under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Dated 18th April 2017

[signed]
Peter Clark
Deputy Chief Executive Officer
Australian Transaction Reports and Analysis Centre

1 Name of Instrument

This Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2017 (No. 1)*.

2 Commencement

This Instrument commences on the day after it is registered.

3 Amendment

Schedules 1 and 2 amend the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

Schedule 1 Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

1. Chapter 59

Item 1 For Chapter 59

Repeal the Chapter, substitute:

Chapter 59 Matters to be considered by the AUSTRAC CEO when deciding to suspend a registration

- 59.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the purposes of subsection 75H(1) of that Act and in reliance on section 4 of the *Acts Interpretation Act 1901*.
- 59.2. Subject to paragraphs 59.3, 59.4 and 59.5, the AUSTRAC CEO may suspend for a specified period of time the registration of a person with or without prior notice.
- 59.3. The AUSTRAC CEO may suspend a person's registration without prior written notice to the person where one or more grounds in paragraph 59.4 apply and the AUSTRAC CEO is satisfied that it is appropriate to do so.

Note: A person whose registration has been suspended by the AUSTRAC CEO without prior notice may still apply for a review of this decision under paragraph 59.5(3) of these Rules.

59.4. Without limiting the matters to which the AUSTRAC CEO may have regard, the AUSTRAC CEO may have regard to any of the following matters when deciding if it is appropriate to suspend the registration of a person under paragraph 59.2, with or without prior notice:

- (1) Whether the person or any of its key personnel:
 - (a) has been charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, terrorism, people smuggling, fraud, a serious offence, an offence under the AML/CTF Act, or an offence under the *Financial Transaction Reports Act 1988* (FTR Act);
 - (b) has been the subject of a civil penalty order made under the AML/CTF Act;
 - (c) has been the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person or any of its key personnel (including by the person or any of its key personnel consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the person's competence, diligence, judgement, honesty or integrity;

and if so, the details of each instance as the case may be, for the person and each of its key personnel;

Note: The above does not affect the operation of Part VIIC of the Crimes Act 1914, which means that certain convictions which are spent convictions are not required to be disclosed under these AML/CTF Rules.

- (2) That the AUSTRAC CEO is satisfied on reasonable grounds that the person has contravened a civil penalty provision of the AML/CTF Act;
- (3) That the AUSTRAC CEO has decided that reasonable grounds exist on which to commence an action to cancel the registration of the person under section 75G of the AML/CTF Act, and that action has not been completed;
- (4) That the AUSTRAC CEO is satisfied on reasonable grounds that the person has contravened:
 - (a) a condition imposed on the registration of a person under subsection 75E(1) of the AML/CTF Act; or

- (b) a provision of the AML/CTF Act or a requirement in the AML/CTF Rules;
- (5) That the AUSTRAC CEO suspects on reasonable grounds that the person may contravene a provision of the AML/CTF Act;
- (6) That the AUSTRAC CEO reasonably believes that information or advice provided under any of the following was not true and correct, or was materially misleading (whether by inclusion or omission), at the time the information or advice was provided:

- (a) information provided in any application for registration made under subsection 75B(1) or (2) of the AML/CTF Act;
- (b) information provided in any application for the renewal of registration made for the purposes of section 75J of the AML/CTF Act;

Note: Chapter 70 of the AML/CTF Rules specifies the requirements for making an application for the renewal of registration on the Remittance Sector Register.

- (c) advice to the AUSTRAC CEO given under paragraph 75M(1)(d) of the AML/CTF Act of any change in circumstances that could materially affect the person's registration;
- (d) advice to the AUSTRAC CEO given under the AML/CTF Rules made for the purposes of paragraph 75M(1)(e) of the AML/CTF Act;
- (e) advice to the AUSTRAC CEO given under subsection 75M(3) of the AML/CTF Act by a registered remittance network provider of changes notified to the provider by a registered remittance affiliate of that provider under subsection 75M(2) of the AML/CTF Act.

Note: Chapter 60 of the AML/CTF Rules sets out the requirements for advising the AUSTRAC CEO of material changes of circumstances and other matters required by section 75M of the AML/CTF Act.

- (7) That the AUSTRAC CEO is satisfied on reasonable grounds that the continued registration of the person involves, or may involve a significant money laundering, financing of terrorism or people smuggling risk.

Note: The conduct of the person and any of its key personnel may be relevant in assessing the money laundering, financing of terrorism or people smuggling risk of allowing the continued registration of the person.

- 59.5. If the AUSTRAC CEO decides that the registration of a person is to be suspended:
- (1) the AUSTRAC CEO must within 7 days give written notice of the suspension to:
 - (a) the person; and
 - (b) if the person is a registered remittance affiliate of a remittance network provider, to that registered remittance network provider;
 - (2) the notice given under paragraph 59.5(1) must:
 - (a) set out the grounds on which the decision was made;
 - (b) specify the period of suspension;
 - (c) specify the date on which the suspension will commence;
 - (d) specify when the suspension will cease;
 - (e) include a statement that the suspension may be reviewed if the AUSTRAC CEO becomes aware of material information relevant to the grounds as specified under subparagraph 59.5(2)(a); and
 - (f) include a statement setting out particulars of the person's right to have the decision reviewed;
 - (3) A person whose registration is suspended may apply to the AUSTRAC CEO for review of the decision;
 - (4) An application for review must:
 - (a) be in writing; and
 - (b) be in the approved form; and
 - (c) set out the reasons why the decision should be reviewed; and
 - (d) be given to the AUSTRAC CEO within 14 days after the receipt of the notice given under paragraph 59.5(1).
- 59.6. A suspension made under paragraph 59.2 cannot commence prior to the date specified in subparagraph 59.5(2)(c).
- 59.7. The AUSTRAC CEO may publish the notice of suspension or extracts from that notice, on AUSTRAC's website or in any manner which is considered appropriate.

- 59.8. The AUSTRAC CEO may, in writing, inform a registered remittance affiliate of the suspension of a registered remittance network provider.
- 59.9. The AUSTRAC CEO may remove the entry relating to one or more of the registrations of the person from the Remittance Sector Register, for the period that the registration is suspended.
- 59.10. A reference in this Chapter to a person or any key personnel of the person who have been convicted of an offence includes a reference to a person in respect of whom an order has been made under section 19B of the *Crimes Act 1914*, or under a corresponding provision of a law of a State, a Territory or a foreign country, in relation to the offence.
- 59.11. In this Chapter:
- (1) 'beneficial owner' has the same meaning as in Chapter 1 of these AML/CTF Rules;
 - (2) 'enforcement action' includes any action of a corrective or punitive nature in respect of an alleged breach of a law taken by a regulatory body of the Commonwealth or a State or Territory, or a government body;
 - (3) 'fraud' means dishonestly obtaining a benefit by deception or other means;
 - (4) 'key personnel' means:
 - (a) in the case of a company, corporation sole or body politic, is a natural person that is;
 - (i) a beneficial owner; or
 - (ii) an officer as defined in section 9 of the *Corporations Act 2001*, or an employee or agent of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy;
 - (b) in the case of an individual, trust or partnership, is a natural person that is an employee or agent of the individual, trust or partnership with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the individual, trust or partnership;
 - (5) 'people smuggling' means conduct that amounts to:
 - (a) an offence against Division 73 of the *Criminal Code*; or

- (b) an offence against Subdivision A, Division 12, Part 2 of the *Migration Act 1958*; or
 - (c) an offence against a law of a foreign country or of a part of a foreign country that corresponds:
 - (i) to an offence referred to in paragraph (a) or (b); or
 - (ii) with the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*;
- (6) ‘person’ has the same meaning as in the AML/CTF Act;
- (7) ‘serious offence’ means an offence which is:
- (a) an offence against a law of the Commonwealth, or a law of a State or Territory, punishable on indictment by imprisonment for life or 2 or more years, that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence) regardless of whether the offence proceeds summarily or on indictment; or
 - (b) an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted a serious offence.

A ‘serious offence’ in relation to a person other than an individual means an offence which would have been a serious offence if the person had been an individual;

- (8) ‘terrorism’ means conduct that amounts to:
- (a) an offence against Division 101 or 102 of the *Criminal Code*; or
 - (b) an offence against a law of a State or Territory that corresponds to an offence referred to in paragraph (a); or
 - (c) an offence against a law of a foreign country or of a part of a foreign country that corresponds to an offence referred to in paragraph (a).

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the Australian Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to the [OAIC website](#) or call 1300 363 992.

Schedule 2 **Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.**

1. Chapter 74

Item 1 After Chapter 73

insert:

Chapter 74 **Exemption for licensed trustee companies**

74.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules are made under section 229 for subsection 247(4) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

74.2. Subject to paragraph 74.3, Divisions 2 to 7 of Part 2, Divisions 2 to 5 of Part 3 and Parts 3A, 5, 6, 7 and 10 of the AML/CTF Act do not apply to a designated service that:

- (1) is of a kind described in items 33, 34, 46, 51 and 53 of Table 1 in subsection 6(1) of the AML/CTF Act; or
- (2) is of a kind described in items 1 and 2 of Table 2 in subsection 6(3) of the AML/CTF Act.

74.3. The exemption in paragraph 74.2 only applies if:

- (1) the person who provides the designated service is a licensed trustee company; and
- (2) the trustee acts in the capacity of:
 - (a) a manager appointed by the law or a Court or Tribunal to manage the financial affairs of a person without that capacity;
 - (b) an executor or administrator of a deceased estate;
 - (c) a trustee of a trust established by:
 - (i) a will;
 - (ii) an order of a court or tribunal; or
 - (iii) a direction of a statutory office holder;
 - (d) an attorney under an enduring power of attorney; or
 - (e) an agent of a person lacking capacity under an agency arrangement.

74.4. The exemption in paragraph 74.2 does not apply where the person is acting in the capacity of a trustee of an inter vivos trust.

74.5. In this Chapter:

- (1) 'inter vivos trust' means a trust established between living persons that commences when the settlor is alive;
- (2) 'licensed trustee company' has the same meaning as in section 601RAA of the *Corporations Act 2001*;
- (3) 'statutory office holder' means a person who holds any office or appointment under an Act;

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the Australian Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to the [OAIC website](#) or call 1300 363 992.